

Notice of Hearing

The Department of Natural Resources announces that it will hold a public hearing on a permanent rule Board Order WY-23-19 to revise chapters NR 102, 105, 106 and 219, relating to adding narrative surface water criteria with numeric thresholds for poly- and perfluoroalkyl substances (PFAS) including perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA) for the purpose of protecting public health as well as revisions to the procedures in the Wisconsin Pollutant Discharge Elimination System (WPDES) permitting program to implement the new water quality criteria. In accordance with s. 227.17, Wis. Stats., the DNR is seeking public comment and feedback on WY-23-19 at the time and virtual location shown below.

Hearing Information

Date: December 10, 2021

Time: 1:00 pm

Virtual Location Link:

- Join Zoom Meeting: <https://us02web.zoom.us/j/83468163627>
- Join by phone: +1 312 626 6799
- Meeting ID: 834 6816 3627
- Find your local number: <https://us02web.zoom.us/u/kew50VSwvc>

Rule Information

Poly- and perfluoroalkyl substances (PFAS) are human-made, organic compounds that have been manufactured for use in non-stick coatings, waterproof fabrics, firefighting foams, food packaging, and many other applications since the 1940s. PFAS are highly resistant to degradation and have been detected globally in water, sediment, and wildlife. This global distribution is of concern as PFAS have documented toxicity to animals and because epidemiological studies have suggested probable links to several human health effects. In Wisconsin, PFAS have been detected in drinking and surface water near sources of industrial use or manufacture and near spill locations. Perfluorooctane sulfonate (PFOS) has been found in fish tissue resulting in the issuance of special fish consumption advisories for some surface waters in the state.

The proposed rules include a water quality standard for two types of PFAS: PFOS and perfluorooctanoic acid (PFOA). Under the Clean Water Act, surface water quality standards can include criteria that are either numeric or narrative. Wisconsin's existing Administrative Codes contain both numeric and narrative criteria for toxic substances:

- Chapter NR 105, Wis. Adm. Code, contains specific numeric criteria for numerous toxic pollutants as well as formulas for calculating numeric criteria for toxics that do not yet have promulgated criteria.
- Section NR 102.04(d), Wis. Adm. Code, contains Wisconsin's narrative criteria for toxics. This existing rule states that substances in concentrations or combinations which are toxic or harmful to humans *shall not be present in amounts found to be of public health significance* [emphasis added], nor shall substances be present in amounts which are acutely harmful to animal, plant or aquatic life.

The proposed PFOS and PFOA standard interprets Wisconsin's existing narrative criterion with numeric thresholds, created under s. NR 105.04(4m) and s. NR 102.04. As shown above, existing rule language specifies that substances shall not be present in amounts found to be of public health significance. The proposed rule defines levels of public health significance for the two types of PFAS based on preventing adverse effects from contact with or ingestion of surface waters of the state, or from ingestion of fish taken from waters of the state.

- For PFOS, the proposed level of public health significance is 8 ng/L for all waters except those that cannot naturally support fish and do not have downstream waters that support fish.
- For PFOA, the proposed level of public health significance is 20 ng/L in waters classified as public water supplies under ch. NR 104, and 95 ng/L for other surface waters.

Related to the proposed PFOS and PFOA standard, the proposed rule also includes assessment protocols that clarify when a surface water that contains levels of PFOS or PFOA above the public health significance threshold levels in the narrative standard should be listed on the state's impaired waters list.

Additionally, this rule includes revisions to ch. NR 106, Wis. Adm. Code that address WPDES permit implementation procedures for the new PFOS and PFOA standard. With regard to permit implementation of the narrative criteria, DNR is proposing source reduction as a first step toward reducing levels of PFOS and PFOA in the effluent rather than requiring treatment up front because source reduction is the most cost effective approach to reducing or eliminating PFOS and PFOA in wastewater discharges and it avoids the generation of contaminated carbon filters from treatment systems which will contain higher levels of PFOA and PFOS that will have to be disposed of in a safe manner.

The proposed rule establishes WPDES permit requirements for PFOS and PFOA discharges to surface waters of the state, in ch. NR 106 – Subchapter VIII, Wis Adm. Code, including: the determination of the need for a PFAS Minimization Plan based on data generation in a reissued permit, a general schedule for PFAS Minimization Plan permit implementation procedures, and PFAS Minimization Plan requirements. The proposed permit requirements include standard PFOS and PFOA sampling frequencies for categories of permitted dischargers. If the department does not believe that PFOS or PFOA is present in a permittee's discharge, sampling may be waived. Based on the effluent data collected, the proposed rule establishes procedures for determining whether a permitted facility's discharge contains PFOS or PFOA at levels that have the reasonable potential to cause or contribute to an exceedance of the PFOS or PFOA standard. For permitted facilities that have the reasonable potential to exceed the PFOS or PFOA standard, the proposed rule requires that the permittee develop and implement a PFAS Minimization Plan in accordance with the timelines in the rule and WPDES permit schedule. The permittee must also continue sampling for PFOS and PFOA.

It is expected that for nearly all WPDES permitted facilities with discharges to surface waters as well as industrial facilities that discharge wastewater to publicly owned treatment plants, source reduction actions outlined in minimization plans will reduce PFOS and PFOA discharges to levels that are below the public health thresholds in standard. Because past pollutant minimization plans for other similar pollutants such as mercury have been shown to result in a 43% percent (median) reduction in effluent concentrations and based on relatively low initial concentrations of PFOS and PFOA observed in permittees' effluents, the department predicts that only a couple of industrial facilities (indirect dischargers) in the state will eventually have to install treatment to comply with the PFOS and PFOA standard. In these cases, the proposed rule allows a compliance schedule for installation of treatment technology.

In the event treatment becomes necessary for a WPDES permit holder, pursuant to s. 283.15, Wis. Stats., the permitted facility may apply for an economic variance if installation of treatment technology will cause substantial and widespread adverse social and economic impacts in the area where the permittee is located.

Finally, this rule adds specifications for the preservation and holding times of aqueous, biosolids (sludge), and tissue samples that will be analyzed for PFAS in ch. NR 219, Wis. Adm. Code.

Accessibility

For the hearing or visually impaired, non-English speakers, or those with other personal circumstances which might make communication at the meeting/hearing difficult, DNR will, to the maximum extent possible and with reasonable advance notice, provide aids including an interpreter, or a non-English, large-print, or recorded version of hearing documents. To access these resources, please contact the email address or phone number listed below as soon as possible.

Appearances at the Hearing and Submittal of Written Comments

The public has the opportunity to testify at the hearing. To register and join the hearing online or by phone, use the information provided above. Pre-registration is also available and is strongly encouraged if you plan to provide spoken comments during the hearing. To pre-register, either use the Zoom link above or download and complete the fillable [Hearing Appearance form](#) and send it to DNR105PFASRule@wisconsin.gov.

Comments on the proposed rule must be received on or before Friday, December 15th, 2021. Written comments may be submitted by U.S. mail, E-mail, or through the internet and will have the same weight and effect as oral statements presented at the public hearing. **Written comments and any questions on the proposed rules should be submitted to:**

Department of Natural Resources
Meghan Williams – WY/3
Department of Natural Resources
101 S. Webster Street
PO Box 7921
Madison, WI 53707
DNR105PFASRule@wisconsin.gov

The rule may be viewed at: <https://dnr.wi.gov/news/input/ProposedPermanent.html>

Comments can be made at: DNR105PFASRule@wisconsin.gov

The rule may be reviewed, and comments made at: <http://docs.legis.wisconsin.gov/code/chr/hearings>.

Initial Regulatory Flexibility Analysis

The department has determined that there may be an impact on small businesses in Wisconsin. A breakdown of the statewide economic impact on small businesses is provided in the two tables below. The number of affected small businesses was determined based on the number of affected industries discussed in the narrative attached to the EIA (Attachment B). The facilities are all expected to either have reasonable potential to exceed the threshold of public health significance or be discharging to a POTW that has reasonable potential to exceed the threshold of public health significance. Consequently, these facilities will, at a minimum, incur costs associated with sampling and development and implementation of a PFAS minimization plan or just source reduction activities. See Attachment B to the EIA for further discussion and explanation of the expected treatment costs.

Estimated Number of Affected Small Businesses

Industry Type	Percentages of Small Businesses by Industry Type	Number of Affected Industries	Number of Affected Small Businesses
Metal Finishers	68%	37	25

Paper/Packaging	23%	21	5
CWTs	76%	7	5
Chemical Manufacturers	72%	10	7
Commercial Laundries	70%	8	6
Total			48

Estimated Statewide Impact on Small Businesses

Cost Type	Number of Small Businesses	Annual Costs
Treatment	1	\$428,126
PFAS Minimization Plan/Source Reduction Measures	48	\$658,944
Sampling	48	\$993,600
Total		\$2,080,670

In order to comply with this rule, affected small businesses will need to develop and implement a PFAS minimization plan to reduce PFOA and PFOS concentrations from their effluents. In order to develop this plan, small businesses will need to research known sources of PFOA and PFOS as they apply to their specific processes and make efforts to eliminate or minimize those sources. This will require the affected small businesses to have knowledge of how to use the internet, communication skills to solicit information from other affected entities, and documentation skills to show what actions have been taken.

All affected small businesses will also need to learn how to obtain a representative sample from their discharge, whether it is a direct discharge to surface waters or an indirect discharge to a publicly owned treatment works ("POTW"). Because of the high potential for cross-contamination when sampling for PFAS, these procedures may be different than how facilities currently sample their effluent. For small businesses that have a direct discharge, their sample results are submitted on monthly Discharge Monitoring Reports (DMR). Small businesses with WPDES permits are familiar with DMR reports. For small businesses that discharge to a POTW, the small business can submit the PFOS or PFOA results directly to the POTW consistent with existing standard reporting procedures.

The department estimates that there will potentially be one small business that may need to install treatment. This will require the small business's current treatment system operators to research the requirements to properly operate a granular activated-carbon treatment system. A compliance schedule may be granted to install treatment.

Although not expected, in the event a small business with a WPDES permit (direct discharger) had to install treatment to comply with the narrative standard, the small business could apply for an economic variance pursuant to s. 283.15, Wis. Stats., if treatment costs would result in widespread adverse social and economic impacts. Without specific financial and employment information for a small business variance applicant, it is impossible for the DNR to determine at this time whether any applicant would qualify for a variance.

The department has considered the methods outlined in s. 227.114(2)(a) to (e), Wis. Stats., and has concluded that, based on existing state and federal regulations, the department cannot exempt small businesses from sampling and reporting requirements or provide a relaxed schedule simply based on the size of a business. The department also cannot exempt small businesses from compliance with the water quality standard. Wisconsin's WPDES permit program is based on the requirements in ch. 283, Wis. Stats., and the state's permitting program must be consistent with federal NPDES permit requirements established in the Clean

Water Act and applicable federal regulations. Federal regulations do not allow less stringent limitations or compliance schedules categorically for small businesses. Although not specific to small businesses, the proposed rule does allow for less-frequent sampling for permittees on a case-by-case basis, and if a small business is not expected to discharge PFOA or PFOS into surface waters, the business doesn't have to sample for these pollutants and would not be subject to the requirements of this proposed rule.

Agency Small Business Regulatory Coordinator

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